

U.S. Application No. 10/751,732, filed January 2, 2004
Attorney Docket No. 14230US03
Response dated January 21, 2010
In Response to Office Action mailed September 21, 2009

REMARKS

Claims 1-46 are pending. Claims 1-46 are rejected.

In the Amendment filed March 13, 2009, Applicant previously amended the specification of the present application with the following new paragraph:

This application is a continuation-in-part of U.S. Patent Application No. 10/230,643, filed August 29, 2002, now issued U.S. Patent No. 7,295,555 B2. Said U.S. Patent Application No. 10/230,643 makes reference to, claims priority to and claims benefit from U.S. Provisional Patent Application No. 60/372,851, filed April 16, 2002; U.S. Provisional Patent Application No. 60/372,852, filed April 16, 2002; U.S. Provisional Patent Application No. 60/363,356, filed March 11, 2002; and U.S. Provisional Patent Application No. 60/363,381, filed March 8, 2002.

Thus, in view of the amendment to the specification filed March 13, 2009, the present application is *at least* a continuation-in-part of said previously co-pending U.S. Patent Application No. 10/230,643, filed August 29, 2002, now issued U.S. Patent No. 7,295,555 B2.

It also respectfully noted that said U.S. Patent Application No. 10/230,643 was already incorporated by reference in its entirety as set forth in the present application, as originally filed. See, e.g., specification at paragraph [42] of the present application.

Applicant has concurrently filed a Petition under 37 C.F.R. § 1.78(a)(3) to Accept an Unintentionally Delayed Claim for the Benefit of a Prior-Filed Application (“the concurrently-filed Petition”).

If the concurrently-filed Petition is granted by the Office, Applicant respectfully requests that the Examiner reconsider all rejections based, *at least in part*, on the document entitled “Marker PDU Aligned Framing for TCP Specification” (“Culley”).

For example, claims 1-13, 16-25, 29-31, 45 and 46 stand rejected under 35 U.S.C. § 102(a)

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as being anticipated by Culley. In view of the concurrently-filed Petition, Applicant respectfully requests that the rejection be withdrawn.

Culley has an alleged date of September 2002 listed on the first page of the document.

However, said previously co-pending U.S. Application No. 10/230,643, now issued U.S. Patent No. 7,295,555 B2, which was incorporated entirely by reference into the present application as originally filed, has an *actual filing date* of August 29, 2002.

Thus, the present application would antedate Culley if the concurrently-filed Petition is granted by the Office.

If the concurrently-filed Petition is granted by the Office, it would be respectfully requested that the Examiner reconsider the anticipation rejection based on Culley.

The remaining pending claims stand rejected under 35 U.S.C. § 103(a) based on a combination of Culley and U.S. Patent No. 7,124,198 ("Pinkerton").

If the concurrently-filed Petition is granted by the Office, it would be respectfully requested that the Examiner reconsider obviousness rejection based on *at least* Culley.

Applicant does not necessarily agree or disagree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of recited claim elements. Furthermore, Applicant respectfully reserves the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicant respectfully reserves the right to pursue, without prejudice in a continuing and/or related application, subject matter that has been withdrawn, amended and/or cancelled.

With respect to the present application, Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim

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scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: January 21, 2010

Respectfully submitted,

/Michael T. Cruz/
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